



## The No Surprises Act is Working, Texas Can Learn from the New Law

### Description

By Blake Hutson

Today it was announced that since the No Surprises Act went into effect at the beginning of the year, Americans have [avoided more than 2 million surprise bills](#) . The law protects patients from most surprise medical bills and removes them from the middle of negotiations between providers and insurers when it comes to disputes on what should be paid. That's the good news.

The bad news is that buried in the text of the new federal law is a provision that allows for the state to apply a different way for resolving billing disputes, and in Texas, that's driving up the cost of health care for many businesses and families.

A little history here helps. Surprise medical bills happen when patients don't have the opportunity to select their provider, like in an emergency, and providers charge patients [out-of-network prices](#) for services rendered—which are higher than rates negotiated by insurers with in-network providers. Providers would then send a “balance bill” of the difference to the patients, often for thousands of dollars.

“Out-of-network care delivered in situations that patients cannot reasonably avoid is fairly common,” the [Brookings Institution notes](#) . That's where the surprise comes in.

Private equity firms bought up these practices—especially in Texas—and exploited the market failure, [raising prices](#) and [threatening patient safety](#) .

Texas was ground zero for surprise billing prior to new protections and had a higher rate of out-of-network care than other states. In 2019, the Texas Legislature [passed a law](#) (SB 1264) designed to curtail surprise medical bills, by removing patients from billing disputes between insurers and providers. But the new law, which went into effect on Jan. 1, 2020, really only applied to those private plans regulated by the state—meaning that [only about 16% of Texans](#) benefited.

Next, Congress stepped in with the [No Surprises Act of 2021](#) , which extends similar protections to the rest of the U.S but benefits from the experience with laws in Texas and other states. The No Surprises Act was an improvement on the Texas law in that it made the process of settling disputed bills between insurers and providers fairer and ultimately more affordable for patients. [According to the Congressional Budget Office](#) , the new law will “reduce commercial insurance premiums by between 0.5% and 1%, saving taxpayers \$17 billion over ten years and saving consumers about twice that much between reduced premiums and cost-sharing.”

One thing the No Surprises Act did was outlaw the use of “billed charges” as a baseline for arbitration—for most states. As the Brookings Institution's

Christen Linke Young [points out](#) , “Billed charges are effectively just made up.” That’s why [employer coalitions, unions, patient and consumer groups, health policy experts](#) , say billed charges are a bad measure that drive up the cost of health care for everyone.

While we wait for the courts and federal agencies to sort out the final rules for the implementation of the No Surprises Act, Texas should reconsider the clear Congressional prohibition on utilizing these billed charges in the dispute resolution process. Texas is one of just a few states that still must consider billed charges—at the 80th percentile level—because of the precedence of existing state law. And those billed charges have been skyrocketing. In the four-year time frame leading up to the Texas law, [the 80th percentile of billed charges almost doubled \(from 700% to 1,200%\) and was significantly higher than the rest of the country](#) .

Texas lawmakers should amend our surprise billing law so that the arbitration process does not require consideration of billed charges.

Texas should also adopt policies that encourage informal settlement instead of expensive arbitration (an arbitrator in each case can cost \$1,000 to \$3,000).

Also, the No Surprise Act included a 90-day “cooling off” period between requests for arbitration. This creates an opportunity for arbitration decisions to result in new in-network agreements. Texas currently has no limits, which coupled with the high number of arbitration requests each year, ultimately increases insurance costs for employers and families. Texas should adopt the No Surprise Act 90-day cooling-off period.

Avoiding millions of surprise bills is a good first step. Now Texans need solutions that both protect patients from surprise bills and rein in health care costs and premiums. Texas lawmakers can provide those solutions by strengthening protections against surprise billing.

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